

AMENDED IN SENATE MAY 11, 2010

AMENDED IN SENATE APRIL 28, 2010

AMENDED IN SENATE APRIL 5, 2010

SENATE BILL

No. 882

Introduced by Senator Corbett

January 14, 2010

An act to add Sections 16005 and 16106 to the Business and Professions Code, and to add Section 118941 to Chapter 9 (commencing with Section 119405) to Part 15 of Division 104 of the Health and Safety Code, relating to tobacco electronic cigarettes, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 882, as amended, Corbett. Tobacco: ~~electronic~~ *Electronic* cigarettes.

Existing law makes it unlawful to smoke in private or public transportation, as specified, and makes a violation of the law punishable as an infraction. Existing law authorizes cities and counties to issue business licenses, set licensing fees, and collect licensing fees. Existing law requires cities and counties to revoke the license of a business that engages in human cloning, as specified *contains various provisions governing cigarettes and tobacco products*.

This bill would make it unlawful for a person to sell or otherwise furnish an electronic cigarette, *as defined*, to a person under 18 years of age and would make a violation punishable as an infraction, *as specified*. By creating a new infraction, this bill would impose a state-mandated local program. ~~This bill would require cities and counties to revoke the license of a business that, on 2 or more occasions, provides~~

~~or offers to provide electronic cigarettes to a person under 18 years of age. By adding to the duties of city and county officials, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.~~

~~With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

~~*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*~~

~~*This bill would provide that no reimbursement is required by this act for a specified reason.*~~

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

~~Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.~~

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) The Legislature hereby finds and declares
- 2 all of the following:
- 3 (1) Electronic cigarettes are not actively regulated by the United
- 4 States Food and Drug Administration (FDA) and are available for
- 5 purchase in this state.
- 6 (2) Initial FDA studies found that electronic cigarettes contain
- 7 known carcinogens and misrepresent nicotine content on their
- 8 labels. As a result, the FDA has warned the public about the
- 9 potential health risks of using electronic cigarettes.
- 10 (3) Electronic cigarettes offered for sale in this state are
- 11 produced overseas and not currently subject to state and federal
- 12 quality control protections.
- 13 (4) Since electronic cigarettes are not regulated at the federal,
- 14 state, or local level, they can be legally sold to minors.

(5) County tobacco control programs have reported the attempted sale of electronic cigarettes to minors at shopping malls. Throughout the state, retailers have established shopping mall kiosks near food courts and stores frequented by adolescents. At these kiosks, retailers target teens with pitches for electronic cigarettes with flavored cartridges.

(6) A 2008 report prepared for the State Department of Public Health found, with regard to the California Tobacco Control Program, that law enforcement agencies continue to rank policies and procedures, such as suspension or revocation of business licenses and civil and criminal penalties for owners and clerks who sell tobacco to minors, as effective strategies to reduce youth access to tobacco.

(b) The Legislature finds and declares that due to important health, safety, and welfare concerns that affect the entire state, regulating the sale to and use by minors of electronic cigarettes is a statewide concern, and not a municipal affair.

~~SEC. 2. Section 16005 is added to the Business and Professions Code, to read:~~

~~16005. (a) A license issued to a business pursuant to this chapter shall be revoked upon notification by a law enforcement agency that a person who owns or is employed by the business has, on two or more occasions, sold, furnished, administered, distributed, given away, or offered to sell, furnish, administer, distribute, or give away an electronic cigarette, to a person under 18 years of age, as prohibited by Section 118941 of the Health and Safety Code.~~

~~(b) This section does not preempt or otherwise prohibit a city from adopting an ordinance that imposes a more restrictive regulation on the sale of electronic cigarettes.~~

~~SEC. 3. Section 16106 is added to the Business and Professions Code, to read:~~

~~16106. (a) A license issued to a business pursuant to this chapter shall be revoked upon notification by a law enforcement agency that a person who owns or is employed by the business has, on two or more occasions, sold, furnished, administered, distributed, given away, or offered to sell, furnish, administer, distribute, or give away an electronic cigarette, to a person under 18 years of age, as prohibited by Section 118941 of the Health and Safety Code.~~

~~(b) This section does not preempt or otherwise prohibit a county from adopting an ordinance that imposes a more restrictive regulation on the sale of electronic cigarettes.~~

~~SEC. 4. Section 118941 is added to the Health and Safety Code, to read:~~

~~118941.~~

~~SEC. 2. Chapter 9 (commencing with Section 119405) is added to Part 15 of Division 104 of the Health and Safety Code, to read:~~

CHAPTER 9. ELECTRONIC CIGARETTES

119405. (a) It is unlawful for a person to sell or otherwise furnish an electronic cigarette, as defined in subdivision (b), to a person under 18 years of age.

(b) “Electronic cigarette” means a device that can provide an inhalable dose of nicotine by delivering a vaporized solution.

(c) *A violation of this section shall be an infraction punishable by a fine not exceeding two hundred dollars (\$200) for the first violation, by a fine not exceeding five hundred dollars (\$500) for the second violation, or by a fine not exceeding one thousand dollars (\$1,000) for a third or subsequent violation.*

~~SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.~~

~~However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.~~

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty

1 *for a crime or infraction, within the meaning of Section 17556 of*
2 *the Government Code, or changes the definition of a crime within*
3 *the meaning of Section 6 of Article XIII B of the California*
4 *Constitution.*

5 ~~SEC. 6.~~

6 *SEC. 4.* This act is an urgency statute necessary for the
7 immediate preservation of the public peace, health, or safety within
8 the meaning of Article IV of the Constitution and shall go into
9 immediate effect. The facts constituting the necessity are:

10 In order to protect the health of minors from a product with
11 contents that have not been comprehensively studied and are
12 unregulated on the market, it is necessary for this bill to go into
13 immediate effect.